1946.

File No. Irrigation II/46

Legal Deptt

B **BRANCH**

P.3(E)/1946

Subject:—

Rules and Notifications under the Bombay Irrigation Act, 1879

File No. Irrigation II/46

Gen. 194 e.

460-B

Submitted.

2. It appears that under G.N.,P.W.D.No.W.I.1815 dated 17.2.1913 at p.254 of B.G.G. 1913 Pt.I, the Govt. of Bombay declared under S. 5 of Bombay Irrigation Act,1879 (Bom. VII of 1879) that the water of the Godavari river and its tributaries so far as they lie within the bounderies of British territory specified therein, should be applied and used by Government for the purpose of the Right and left Bank Godavari Canals after 1.6.1913. In his decsion in suit No.423 of 1932 (vide p. 109 ante) the First Class sub-Judge Nasik has held that there must be a direct contact between the river and the stream alleged to be its tributory and that as three streams or rivers intervene between Gori and Godavari, - the stream Gori cannot be called a tributary of Godavari. Accordingly, the Commissioner C.D. has raised (ps.111-112 ante) the question of revising the form of notifications issued under S. 5 of the Bombay Irrigation Act,1879 (Bom.VII of 1879) with respect to particular rivers and their tributories, even assuming that the above decision of the court is wrong, in the manner suggested by him at p. 112 ante. The P.W.D. has therefore requested the R.L.A. (P.113ante) to state (1) whether the view taken by the First Class sub-Judge, Nasik namely that the definition of "tributary" as a stream or river flowing into a larger river or into a lake" indicates that there must be direct contact between the river and the str alleged to be its tributary, is correct; ar (2) if the said view is correct, to sugges general notification which will have the of making clear the meaning of the word tributary" used in the notifications is far.....

far; and even if the sub-Judge's view is incorrect, it would be desirable to alter suitably the wording of the future notifications under S. 5 of BomVII of 1879, to avoid any misunderstanding in the matter and that to action need be taken as regards the notifications already issued thereunder.

The question for R.L.A's consideration are:-

(1) Whether the term "tributary" as defined by the Sub-Judge Nasik, is correct; and

(2) Whether with a view to avoid any misunderstanding, it would be desirable to alter suitably the wording of the notifications which may be issued under section 5 of the Bombay Irrigation Act.

EKN.13/7/

Office of the R.L.A.

The view taken by the Commissioner, Central Division, in paragraph 3 of his letter at p.111 ante is supported by Hall v.Redid (1882,10 Q.B.D. 134) and not amendment of the notifications appears necessary

Sd/ A.R.Khan

for Remembrancer of Legal Affairs

M.R. to P.W.D. No.7208,dated the 21st October 1936.

EKN.13/7/